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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2011-01]

Preliminary Plan for Retrospective Review Under E.O. 13579

AGENCY: United States Parole Commission, Justice.

ACTION: Request for comments.

SUMMARY: The U.S. Parole Commission is asking for comments on its preliminary plan for the retrospective review of its regulations to determine whether any of the regulations should be repealed, modified or expanded. The Commission is undertaking the review to comply with Executive Order 13579, “Regulation and Independent Regulatory Agencies,” issued by the President on July 11, 2011. The purpose of the review is to ensure that the Commission’s regulations fulfill the Commission’s mission and are effective, cost-efficient and understandable.

Comment Date: Written comments must be postmarked and electronic comments must be submitted by February 17, 2012. Please note that that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: You may mail comments to the United States Parole Commission, attn: USPC Rules Group, 90 K Street, N.E., 3d Flr., Washington, DC 20530. You may also

submit comments electronically or view an electronic version of this notice and of the plan at <http://www.regulations.gov>, at Docket No. USPC-2011-01.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, General Counsel, U.S. Parole Commission, 90 K Street, N.E., 3d Flr., Washington, DC 20530; Telephone (202) 346-7030.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. All comments received are part of the public record and available for public inspection online at <http://www.regulations.gov>. Comments may include personal identifying information voluntarily submitted by the commenter. When found, personal identifying information will not be posted online but will be maintained in the agency's public docket file.

Overview and Background

On July 11, 2011 the President issued Executive Order 13579 "Regulation and Independent Regulatory Agencies." The order states that each independent regulatory agency should prepare a plan for the periodic review of its existing significant regulations to determine those regulations that are outdated, unnecessary or ineffective. The review enables the agency to modify or repeal a rule to increase the effectiveness of the regulatory program or lessen unnecessary burdens caused by the rule. This order highlights the importance of maintaining a culture of retrospective review of an agency's regulations.

Pursuant to Executive Order 13579, the Parole Commission has developed a preliminary plan for a review of its regulations. The Commission primarily performs law-enforcement functions in releasing an offender from a prison term imposed by a sentencing judge, setting conditions of release, revoking the release if the offender violates the release conditions or terminating the sentence early for good conduct on parole supervision. The Commission's rules define the procedures and standards used to carry out the functions described above. Many of the rules incorporate statutory requirements. Other rules, such as the paroling policy guidelines, reflect policy choices made by the Commission members within the broad grant of authority given by Congress on executing the Commission's functions. The application of the rules may affect the lives of individual persons and the general public welfare, but the Commission's rulemaking and actions do not have a significant impact on economic entities and businesses.

Over the last ten years, the Commission has issued 13 publications of final rules and 5 publications of interim rules that have yet to be promulgated as final rules. The majority of this rulemaking pertained to: implementing new legislation and court decisions; adopting procedural rules on internal voting requirements and using new technology in conducting hearings; streamlining the revocation process for parole violators who have committed non-criminal violations of release; and eliminating or clarifying rules that are outdated or confusing.

Scope of the Plan and Previous Agency Efforts

The Commission's preliminary plan for the regulatory review includes all rules promulgated by the Commission and all notes and procedures in its Rules and Procedures Manual (June 30, 2010 edition). The ambitious scope of this effort may have to be adjusted depending on the workload of those staff members who are charged with carrying out the review. The Commission's review will extend to proposed rules and interim rules that have not been made final rules.

In 2004 a Commission working group, headed by the former chief of staff, undertook a project to rewrite the Commission's Rules and Procedures Manual. The purpose of the project was to simplify the rules and instructions in the manual, eliminate obsolete provisions and make the manual easier to use. Had this effort been pursued to its completion, the Commission would have engaged in significant rulemaking. But, as often happens, the press of agency business and the setting of other priorities overtook the effort. Nonetheless, this working group achieved significant progress in redrafting a large portion of the manual and its work will be the foundation for the preliminary plan of regulatory review that the Commission announces with this publication.

Preliminary Plan for Regulatory Review

The Commission Chairman has appointed an agency working group that will execute the review of the Commission's rules. Every Commission section is represented on the working group, which is monitored by Commissioner J. Patricia Smoot, and chaired by the Commission's General Counsel, Rockne Chickinell. The group's task is to determine whether a rule is outmoded, ineffective or imposes costs that are disproportionate to the benefits of the rule, and make recommendations to the

Commission on the modification, addition or removal of rules. The group will also review the rules for clarity and readability.

The review will begin with those rules and procedures that pertain to imposing conditions of release for an offender. Congress instructed the Commission that the release conditions “be sufficiently specific to serve as a guide to supervision and conduct.” 18 U.S.C. 4209 (b). So it is particularly important that the release conditions are clear and understandable to the offender under supervision. Also, unduly burdensome release conditions may be counterproductive to the offender’s success on supervision. The Commission substantially revised its standard release conditions through an interim rule in 2003. 68 FR 41696-41714 (July 15, 2003). The retrospective review will include an analysis of whether the revisions of 2003 need to be updated and whether the manual should provide guidance as to the parsimonious application of release conditions that are not required by law.

The review will proceed to the rules and procedures that govern the parole and supervised release revocation process. Most of the Commission’s workload consists of responding to reports of violations, issuing violator warrants and conducting revocation proceedings. Carrying out the revocation function involves a significant number of participants outside the Commission, including supervision officers, deputy U.S. Marshals, police officers, private attorneys and public defenders, witnesses from the general public and the offenders. The retrospective review of revocation rules and procedures should benefit a broad range of the persons who participate in the Commission’s activities. The Commission also recognizes that the parolee who is facing

possible revocation has a substantial interest in a process that reduces the incidence of error that may be caused by confusing or ambiguous rules and instructions.

The review will end with an analysis of the rules and procedures covering parole release determinations and internal procedures such as voting requirements by hearing examiners and Commission members.

In its examination the working group will pay particular attention to those rules and procedures that: place high costs or burdens on the public, require outdated reporting practices, affect a large group of persons or entities, overlap with or duplicate other rules, are obsolete given changes in laws or other circumstances or have been the subject of requests for rulemaking.

Public Participation in the Review and Rulemaking

In addition to this request for comment, the Commission will send out notices to interested organizations seeking the views and comments on the continued relevance and effectiveness of the Commission's rules. Interested organizations included in this outreach effort are correctional and parole supervision entities such as the Federal Bureau of Prisons, the District of Columbia Court Services and Offender Supervision Agency, the U.S. Probation Service and organizations frequently representing the interests of federal and District of Columbia offenders such as Federal Defender's offices in Philadelphia, Pennsylvania and Oklahoma City, Oklahoma, the D.C. Public Defender Service, and CURE, Inc.. At any time during the review period, the public may provide their views and recommendations to the working group by writing the Commission at U.S. Parole Commission, attn: USPC Rules Group, 90 K Street, 3rd Flr., Washington,

DC 20530 or sending an email to USPCRulesGroup@usdoj.gov. If the Commission decides to proceed with rulemaking at any stage of the retrospective review, the Commission will follow the normal rulemaking process, usually with a 60-day notice and public comment period for proposed rules. The working group will analyze the public comment for the Commission's review and recommend responses to the comments submitted. The working group will then forward their recommendation on final rulemaking to the Commission for a vote at the open session of a Commission business meeting. Any interested person or organization may observe the Commission's discussion of a rule change at the open business meeting.

As the working group conducts its review, the Commission will report its progress on the agency's website, including any rulemaking initiatives taken by the Commission in response to the working group's review. The Commission's goal is to complete its retrospective review by September 30, 2013.

Maintaining the Review Process

The Commission's effort to sustain a culture of review and analysis of its rules and procedures will not end with the completion of the retrospective review required by the executive order. During the retrospective review, the Commission will rely on the working group to review any new regulatory initiative for issues such as the need for the rule, the burden placed on the public and criminal justice agencies by the rule, any alternatives to the rule and the clarity of the proposed wording of the rule. Even after the retrospective review ends, the Commission intends to maintain the working group for the

periodic review of its rules and manual provisions and to analyze new proposed rules and procedures.

Dated: December 5, 2011

Signed: Isaac Fulwood, Chairman, U.S. Parole Commission

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